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Supreme Court of the United States

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Petitioner

v.

District of Columbia Court of Appeals
500 Indiana Ave. NW, Room 6000
Washington, DC 20001

And

Committee on Admissions
District of Columbia Court of Appeals
500 Indiana Ave. NW, Room 4200
Washington, DC 20001

Respondents

On Petition For Writ Of Certiorari
To The District of Columbia Court of Appeals

PETITION FOR WRIT OF CERTIORARI

Questions Presented for Review and Basic Facts

Basic Facts

Petitioner a USA citizen earned 3 law degrees with honors and magna cum laude results from British and ABA accredited law schools, LL.B. (London), LL.M. (Miami), LL.M. (Cambridge). Petitioner passed the Michigan bar examination with an MBE score of 166 and passed the MPRE in California. Petitioner has 5 years of law school and 2 years of undergraduate education. Petitioner can meet all moral character requirements (although not an issue in case). Respondent without conducting a substantive or procedural equivalency analysis of petitioner's legal education and bar exam pass and without due process procedures in place to conduct an evaluation held that petitioner was unqualified to take DC bar exam. Respondent refuses to weigh expert third party evidence or evaluate petitioner's legal education, courses, contents, grades, bar exam pass, quality of learning and basic purposes compliance with their bar admission rules. Petitioner has 145 semester hours of ABA law school equivalent education; 25 semester hours of ABA law school education. Respondent refuses to weigh assessments of ABA law schools and five state supreme court determinations that petitioner holds at least an equivalent ABA JD degree. Respondent failed to state with certainty what topics, specific cases, laws, regulations, principles, rules and specific areas of learning are required to take bar exam with sufficient clarity. Respondent refused to recognize their equitable jurisdiction and weigh petitioner's list of 20 equitable factors for a waiver of Court Rule 46. Respondent held that constitutional laws of due process, equal protection, interstate commerce, full faith and credit and the Sherman Act do not apply to respondent or were not violated. Respondent failed to apply rules of stare decisis. They arbitrarily, vaguely and inconsistently apply the law on bar admissions. Respondent is grossly negligent in their administration of justice in that the majority of 38,000 poor and disadvantaged unrepresented litigants loose their cases every year.

Questions for Review

1. Did respondent and respondent's bar admission rules as formulated, issued and applied violate petitioner's constitutional

rights and federal law herein discussed; due process, equal protection, interstate commerce clause, full faith and credit and the Sherman Act when respondent determined that petitioner was not qualified to take all or part of bar exam or be admitted on motion? Especially in light of the fact that respondent did not perform a substantive or procedural equivalency evaluation of petitioner's legal education? Also in light of the fact that Court Rule 46 does not allow a substantive or procedural equivalency evaluation of petitioner's legal education.

2. Did respondent violate this courts holding in Baird v. State Bar of Arizona 401 US 1 (1971) that held that a morally suitable petitioner with a proficiency in the law has a right to practice his occupation?

3. Did the respondent violate petitioner's constitutional rights when they failed to conduct a basic purposes due process analysis of petitioner's legal training as required by the Supreme Court in DC Court of Appeals v. Feldman 460 US 462 (1983)?

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10) Dean Milk Co. v. Madison 340 US 349 (1951) Pages 14,16
11) Evitts v. Lucey 469 US 387, 105 S. Ct. 830 (1985) Page 8
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35) Supreme Court of New Hampshire v. Piper 470 US 274, 105 S. Ct. 1272 (1985) Pages 8, 13, 15
36) Supreme Court of Virginia v. Friedman 487 US 59, 108 S. Ct. 2260 Pages 13, 15
37) Teare v. Committee on Admissions 566 A.2d 23 (DC App. 1989) Pages 1, 7, 11, 15
38) Texas v. Hopwood 518 US 1033, 116 S. Ct. 2581 (1996) Page 9
39) United States v. South-Eastern Underwriters Association 322 US 533, 558 (1944) Page 18
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Opinions Below

The District of Columbia Court of Appeals issued a Per Curiam order on July 29, 2005 denying petitioner's petition to take all or part of bar exam or to admit petitioner to bar on motion.

Jurisdiction

The judgment of the court of appeals was entered on July 29, 2005. The jurisdiction of this court is invoked under 28 U.S.C.

Section 1257 and Article III, Section 2 of the Constitution of the USA. See In re Summers and DC Court of Appeals v. Feldman

Federal Questions

Petitioner filed a 70 page petition, (original petition) with the respondent seeking admission to their bar exam, a part of bar exam and or admission on motion. Half of this petition dealt specifically with all constitutional and federal law questions raised here. The facts and law were argued clearly and in substantial detail. An exhaustive list of Supreme Court cases were analyzed and applied. Respondent simply rejected ALL constitutional and federal law issues out of hand. Respondent's committee on admissions said such arguments have been rejected numerous times by respondent and they should be rejected in this petition. Respondent denied petition without oral argument or opinion.

Constitution, Court Rule and Statute Involved

1. The fourteenth Amendment to the United States Constitution provides:

   All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

2. Due Process Clause of the Fifth Amendment to the United States Constitution
3. The Commerce Clause of the United States Constitution
4. The Full Faith and Credit Clause, Article IV Section 1 of the United States Constitution provides:

   (1) Full Faith and Credit shall be given in each State to the public acts, records, and judicial proceedings of every other

state. And the congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.

5. 15 U.S.C.A section 1 – 7, The Sherman Act section 2 provides:

Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding one million dollars if a corporation, or, if any other person, one hundred thousand dollars, or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court.

6. DC Court of Appeals Rules of Court Rule 46, Bar Admissions

Rule 46(3) Proof of legal education in a law school approved by the American Bar Association. An applicant who has graduated from a law school that at the time of graduation was approved by the American Bar Association or who is certified by the dean of such law school as being eligible for graduation shall be permitted to take the bar examination. Under no circumstances shall such an applicant be admitted to the bar without first having submitted to the Director a certificate that the applicant has graduated from an approved law school with a JD or LLB degree.

Rule 46(4) Law study in law school not approved by the ABA. An applicant who graduated from a law school not approved by the American Bar Association shall be permitted to take the bar examination only after successfully completing at least 26 semester hours of study in the subjects tested in the bar examination in a law school that at the time of such study was approved by the American Bar Association.

Statement & Argument

Why should petition be granted?

Respondent consistently ignores the constitutional law, which directly harms the petitioner and similarly situated bar applicants. See Teare v. Committee on Admissions, Massachusetts School of Law v. Committee on Admissions, Hicks v. DC Committee on Admissions, DC Court of Appeals v. Feldman, In re Robert Baker, In re Forcese , In re Johnson , In re McCormick, In re Robert A. Quigley, In re Wu. Many state supreme courts refuse to apply the constitutional law as it relates to bar admissions. See a recent Legal Times (Washington, DC) article fully describing the court's and law professions entrenched restrictive practice hurdles to bar admissions. Whereas many states apply the constitutional law and offer the relief herein sought. There are several dozen non-ABA law schools, thousands of current non-ABA law school students, thousands of LLM students like petitioner that attended ABA law schools and thousands of international law schools. This case will establish a fair and equitable standard by which all bar applicants are academically evaluated. This case will require all gatekeepers to adopt fair standards for evaluating new entrants to all occupations and professions. Most importantly, this case will greatly improve the ACCESS TO JUSTICE by increasing the number of lawyers financially able to assist the poor and disadvantaged.

DC Court of Appeals Denied Petitioner Procedural and Substantive Due Process

Respondent, without knowing one single case, law, legal principal, theory or rule that petitioner studied in Cambridge, London or Miami held that petitioner was not qualified to take bar exam or practice law in Washington, DC. Respondent does not understand that British law is the basis of the American legal system and that almost every American legal principal is found in British law. They do not understand that a British law degree from London or Cambridge universities is enough training to pass the bar exam as is annually demonstrated in the New York bar exam, which does not

require ABA or USA law school education from graduates of Cambridge, London and Oxford universities.

The fourteenth and fifth amendment to the US Constitution requires the DC Court of Appeals to provide the petitioner both substantive and procedural due process before denying his petition to take their bar exam and or practice law in DC. The government shall not take a person's life, liberty, or property without due process of law. The respondent must provide notice of an adjudicative process and an opportunity to be heard. The Supreme Court will weigh three factors in determining what constitutes fair process; (1) importance of individual interest, (2) value of specific safe guards to that interest and (3) the respondent's interest in fiscal and administrative efficiency. Here the petitioner is a settled resident in Washington, DC with an established retail store and other commercial business interest in DC. The petitioner holds three law degrees, a bar exam pass and a MPRE pass. The petitioner has a right to practice his profession in Washington, DC. Respondent without conducting a substantive or procedural qualitative equivalency analysis of petitioner's legal education and bar exam pass and without due process procedures in place to conduct such an evaluation held that petitioner was unqualified to take the DC bar exam. Respondent refuses to accept expert third party evidence from academic evaluators, ABA law schools and other state supreme courts or evaluate petitioner's legal education, courses, contents, grades, bar exam pass, quality of learning and basic purposes compliance with their bar admission rules. Respondent failed to state with certainty what topics, specific cases, laws, regulations, principles, rules and specific areas of learning are required to take all or part of bar exam with sufficient clarity. Respondent refused to recognize their equitable jurisdiction and failed to weigh petitioner's list of twenty equitable considerations for a waiver of rule 46. The respondent's interest in fiscal and administrative efficiency is easily satisfied as petitioner paid for all third party evidence and evaluations. The respondent was simply required to read this third party evidence and or listen to petitioner's oral arguments and presentation of this evidence in open court. This involves little time and money. Evidence from other state supreme courts, ABA law schools and academic evaluators is highly reliable and probative of

petitioner's legal training. The respondent is required to give petitioner an individualized adjudication to determine his compliance with the basic purposes of the bar admission rules. The respondent did not grant a hearing nor did they weigh petitioner's evidence. Respondent has issued vague and arbitrary bar admission rules and failed to apply these rules consistently with the rules of stare decisis.

These bar admission rules as formulated and applied to the petitioner do not allow the petitioner to offer written evidence of his basic purposes compliance with these bar admission rules nor do they allow a formalized evidentiary hearing. Some form of procedural due process either written or hearings or both is required by the Supreme Court as held in Board of Curators of University of Missouri v. Horowitz.

The Supreme Court held in Willner v. Committee on Character and Fitness that petitioner was denied procedural due process when he was denied admission to the bar without a hearing to challenge charges filed against him. This court also held that the requirements of procedural due process must be met before a state can exclude a person from practicing law. Procedural due process requires confrontation and cross-examination of those whose word deprives a person of his livelihood. Here the respondent is refusing to hear and weigh petitioner's evidence.

The Supreme Court held in Schware v. Board of Bar Examiners that a state cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene the due process clause of the 14th amendment. A state can require high standards of qualifications, such as good moral character or proficiency in its law before it admits an applicant to the bar, but any qualification must have a rational connection with the applicant's fitness or capacity to practice law. However, even in applying permissible standards, officers of the state cannot exclude an applicant when there is no basis for their finding that he fails to meet these standards. Here the respondent is refusing to allow petitioner to establish an educational basis.

DC Court of Appeals Irrebuttable Presumption Excludes Petitioner from Law Practice

Respondent irrebuttably presumes that petitioner's three law degrees from highly accredited universities including one by the ABA, does not meet the minimum requirements of learning for a JD degree from an ABA law school. The JD degree from an ABA law school is respondent's benchmark threshold for the bar exam and law practice. This presumption denies petitioner's constitutional fundamental right of due process. This presumption precludes petitioner from proving his law proficiency and basic purpose compliance with the bar admission rules such that petitioner's right to practice law and participate in the judicial branch of government as a lawyer in Washington, DC is unconstitutionally denied. The Supreme Court held in Michael H. & Victoria D. v. Gerald D. that this constitutional ground of attack is based on the lack of fit between the classification, here that "only" an ABA law school can provide quality training and the policy underlying the classification, which is the bar applicant's acquisition of a proficiency in the law. The rule holds that since the presumption may not be valid for each member of the class, denial of an opportunity to challenge the presumption violates due process. Individualized determinations are necessary for due process to be satisfied. See Cleveland Board of Education v. La Fleur. This ABA law school requirement presumes all other legal study is substandard and inadequate to take the DC bar examination and or practice law in DC without accepting proof to the contrary.

Respondent precludes the petitioner offering evidence from third party independent education and degree evaluators that the petitioner has acquired a legal education and law degrees that at least equals the legal education and degrees obtained in an ABA law school JD degree. The petitioner with his two advanced graduate law degrees as well as his bar exam pass in Michigan possess a legal education superior to the legal education on offer at the typical ABA law school JD degree. The requirements of procedural due process requires respondent to allow petitioner to call witnesses, produce expert evidence, produce relevant evidence generally to prove that petitioner has the required basic purposes law proficiency. Due

process allows petitioner to cross examine any party and challenge any evidence generally that asserts that petitioner does not have the legal educational proficiency to be admitted to the DC bar exam and or practice law in DC.

The proper standard for review is strict scrutiny and the respondent has the burden of proving that Court Rule 46 and respondent's denial of due process is necessary to achieve a compelling or overriding government purpose. There are many less burdensome means available to accomplish respondent's goal – a competent bar. Respondent's Rule 46 and it's application does not pass constitutional strict scrutiny. Petitioner has a fundamental right to due process.

DC Court of Appeals Denies Petitioner the Equal Protection of the Laws

Respondent's bar admission rules, found in Rule 46, are court rules formulated by respondent. The respondent's power to make these rules flow from congress' delegated authority to the respondent to make bar admission rules for Washington, DC. Here the respondent is both making and enforcing bar admission rules. There is nothing in the act of congress granting the DC Court of Appeals authority to benefit one method of legal education and burden another method of legal education.

The right to earn a living through a lawful occupation is a property right under the 14th amendment and may not be taken away arbitrarily. The respondent denied the petitioner equal protection of the laws when respondent held that petitioner's three law degrees, bar exam pass and MPRE pass did not meet the basic purposes of respondent's rules to be admitted to bar exam and practice law in Washington, DC. Respondent's sole reason was because petitioner does not have a JD degree from an ABA law school and petitioner did not repeat 26 semester hours at an ABA law school. The ABA classification of Rule 46 and applied by respondent created a suspect classification. Respondent's failure to conduct an analysis of petitioner's compliance with the basic purposes of Rule 46 denied petitioner the equal protection of the laws. This broad automatic

exclusion eliminates both highly qualified and poorly qualified candidates without justification, equivalency evaluation or due process review. See Yick Wo v. Hopkins and In re Griffiths.

The proper standard for review is strict scrutiny and the respondent has the burden of proving that Rule 46 and respondent's application of rule is necessary to achieve a compelling or overriding government purpose. There are many less burdensome means available to maintain a competent bar. Rule 46 and it's application to petitioner does not pass constitutional strict scrutiny. Petitioner has a fundamental right to due process and an equal protection property right not to be excluded from bar exam or law practice simply because of his law school's ABA accreditation. The correct equal protection constitutional focus of inquiry is; "what did the petitioner learn in law school? Did he learn enough about the law to competently represent clients in Washington, DC? Were the petitioner's law schools in England accredited by agencies similarly situated to the ABA? Does petitioner's bar exam pass demonstrate the required level of learning?" The respondent has no interest in denying the petitioner the benefit of law practice. The respondent has no interest in imposing additional burdens on petitioner. The respondent has no interest in benefiting ABA accredited law schools and burdening those other equally accomplished law schools accredited by other equally distinguished accrediting authorities.

The respondent can not meet the strict scrutiny review because there are many less burdensome means available to achieve a competent bar as discussed in petitioner's original petition. In addition, the respondent can not meet the rational basis standard for review because the respondent does not have a legitimate governmental interest in regulating where a bar candidate learned the law. Respondent must determine whether or not the bar candidate has in fact learned enough law for bar exam and practice purposes. How the knowledge was acquired versus the possession of knowledge are very different questions. Whether the petitioner went to a law library or a law lecture to acquire knowledge is irrelevant to the possession and use of that knowledge. The respondent's dislike of less expensive non-ABA law schools or their dislike of highly qualified bar candidates from non-ABA law schools is irrelevant and

misguided. The respondent's sole interest is in the possession, accuracy and quantity of the bar candidate's legal knowledge to take bar examination and practice law in Washington, DC.

In the recent Supreme Court case of Grutter v. Bollinger the Supreme Court held that Michigan's law school admissions procedures which narrowly tailored the use of race in admissions decisions to further a compelling interest in obtaining the educational benefits that flow from a diverse student body is not prohibited by the equal protection clause nor title VI. The key point in this case was that the admission policies used many different variables listed in the case to determine an applicant's admission. Both hard and fast objective criteria like GPAs, LSATs and courses studied at the undergraduate level as well as subjective soft factors such as recommendations, quality of petitioner's universities, socioeconomic background and race just to name a few were put in the admission's calculation. Here the sole use of the ABA accreditation factor only to gage petitioner's legal education proficiency and quality is unconstitutional as it violates the equal protection clause. Respondent's ABA requirement precludes the petitioner proving his proficiency in the law and facially denies his law proficiency, facially prejudices his legal education and unconstitutionally negates his unquestionable ability to pass a bar exam or to successfully practice law in DC. The ABA standard can be one of many factors, not the sole yardstick.

In Teare v. Committee on Admissions respondent held that they did not contravene the constitutional requirements of equal protection because Rule 46 has a rational connection with legitimate state purposes. This holding only considered half of the required Supreme Court test. Mainly the missing part of the analysis required by the Supreme Court is that the rule must be the least restrictive means of achieving the court's objectives. There are several ways for bar applicants to earn a legal education that will ensure competent legal representation of the public and the administration of justice in DC. So, when applying the second part of the equal protection test then Rule 46 is unconstitutional in its formulation and application to the petitioner.

In light of the Supreme Courts many holdings that equal protection applies to individuals and not groups, respondent must issue and apply bar admission rules that properly evaluate individual bar applicants qualifications to take all or part of the bar examination and practice law in DC. Respondent's automatic exclusion of all types of legal education except an ABA education fails to take into account foreign law school education which may in fact be better than the education earned at many of the 191 or so ABA law schools.

In Supreme Court of New Hampshire v. Piper the Supreme court held that lawyering is a "National Fundamental Right" and lawyers play an important part in commercial intercourse and the national economy. Here respondent's limit to the bar examination and the practice of law in DC to those graduates of ABA law schools significantly burdens the exercise of a fundamental right such that strict scrutiny of this bar admission rule must be applied. Once applied this current bar admissions rule can not stand in its current form nor how it is applied to the petitioner because there are several alternative means available to determine whether or not the petitioner has acquired a proficiency in the law that are less restrictive than respondent's automatic exclusion.

The Supreme Court has reiterated in several cases that due process applies because of its demand for a fair opportunity to obtain an adjudication on the merits; equal protection applies because of the differential treatment of two classes of litigants. See Evitts v. Lucey or Ake v. Oklahoma. Here due process applies because the petitioner is entitled to an adjudication of his claims that he has complied with the basic purposes of the bar admission rules and equal protection applies because respondent's discrimination and differential treatment of foreign law school graduates with an ABA legal education arbitrarily, unnecessarily and unreasonably burdens the petitioner's right to take all or part of the DC bar examination, be admitted on motion and or practice law in DC.

Both the fourteenth and fifth amendment protect persons and not groups. Also, the Supreme Court held that in this area of due process and equal protection that laws must be narrowly drawn to achieve

the government's objective and case by case considerations must be made. See City of Richmond v. J.A. Croson Co.

Justice Powell voting with the majority in Regents of the University of California v. Bakke stressed that equal protection is a personal right of an individual to be judged on the basis of individual worth and merit and not on the basis of class membership. The Supreme Court applied strict scrutiny to the race based classification at issue in this case but held that it violated the Civil Rights Act only. In Texas v. Hopwood and Adarand Constructors Co. Inc v. Pena the Supreme Court tightened up this principle of individual merit and case by case determinations where they held that racial preferences in the education admissions setting are only conceivable in very rare remedial contexts. In the context of bar admissions respondent must weigh the qualitative merits of the petitioner's basic purpose compliance with the bar admission rules. The fact that all bar applicants must comply with the ABA law school criteria does not immunize this rule from the heavy burden of justification required by the equal protection and due process clauses where the Supreme Court has rightly recognized that in questions of qualifications individual merit must prevail.

The petitioner is in a class of bar applicants called graduates of foreign law schools and graduates of ABA law schools. Respondent's discrimination against this type of law school graduate is too broad and too exclusive. Both Cambridge and London universities are foreign law schools recognized by the UK's Bar Council and Law Society as providing the necessary academic legal education for professional licensure as a Barrister or Solicitor in the United Kingdom. These law schools are accepted in all common law countries. Cambridge is nearly 800 years old with a history of educating some of the best legal minds known to the common law world. John Harvard, the founder of Harvard University graduated from Cambridge. The University of London is roughly 200 years old with an equally impressive history. Petitioner's law degrees are recognized in all common law jurisdictions around the planet and many states in America. Foreign law schools do not require ABA accreditation and include all law schools from common law and civil law countries. There is a fundamental distinction between a

British common law legal education which is the historical basis of the District of Columbia legal system and civil law legal education which is the basis of civil law jurisprudence. Graduates with common law degrees will be far better equipped to deal with the District of Columbia legal system then graduates of civil law programs due to the nature of the different legal systems. Curiously, law graduates and lawyers from Louisiana's civil law ABA law schools gain admission to the DC bar without a petition. Respondent is bias. They deny petitioner the equal protection of the laws.

Non-ABA law schools include institutions of legal study in America accredited by states only and other law study programs not accredited by standard setting bodies of higher learning of any type neither the state nor the ABA nor do they possess a world wide recognized quality in their legal training. Some law school graduates may present questions as to sufficiency and quality of their legal training. On the other hand, the mere fact that a bar candidate graduated from an ABA law school does not address the very wide difference in qualities between the top ranked ABA law schools and the bottom ranked ABA law schools. Both are permitted to become members of the DC bar even though their legal training and skills may be dramatically different. Bar pass rates, disbarrment rates and levels of successful law practice are widely different. Petitioner acquired a top quality legal education from the United Kingdom because an equivalent top quality legal education from an ABA law school was beyond his financial means. America's ivy league turns away thousands of highly qualified applicants every year. A mere short hand designation and prohibition discriminating against all non-ABA law school graduates generally without a proper substantive basic purposes judicial inquiry into the details of the individual bar applicant's legal education and training violates the equal protection and due process clauses.

DC Court of Appeals Claims Full Faith and Credit Clause Does Not Apply to Courts

Article IV Section 1 of the constitution requires the respondent to give the public acts, records and judicial proceedings in California, Michigan, North Carolina, New Hampshire and New York full faith

and credit in DC. The highest courts in these states determined through a judicial inquiry that petitioner has a legal education at least equivalent to a JD degree from an ABA law school. In the case of California and New York, third party and internal academic evaluations of petitioner's legal education were conducted. Michigan, New Hampshire and North Carolina determined that petitioner's LLM from an ABA law school, the University of Miami, and other education was at least equivalent to a JD degree from an ABA law school. ABA law schools require a JD degree or it's equivalent before admission to their LLM degree programs.

Respondent has consistently held that "the system of rules a state court adopts to govern admission to the bar is a matter of local policy, and not a judgment on the merits in a case or controversy. The District of Columbia Court of Appeals need not extend full faith and credit to assessments made by the courts of other states." However, admission to the bar exam and the practice of law is no longer a purely local matter. The Supreme Court cases and economic realities in DC discussed here and in original petition where countless lawyers represent clients from around the nation and world on issues that impact the whole nation clearly evidences that bar admissions is a local, national and international matter.

Respondent in Teare v. Committee on Admissions held that they were not required to give the "assessments" of bar applicant's ABA equivalent legal education by other state Supreme Court's binding recognition under the full faith and credit clause. Here the Respondent incorrectly characterized these determinations as "assessments" where the Supreme Court held in DC Court of Appeals v. Feldman that these determinations are "judicial inquiries." These judicial inquiries become final judgments of the highest courts in the particular state making the judicial inquiry. Therefore, five state Supreme Courts, California, Michigan, North Carolina, New Hampshire and New York decided that petitioner earned a legal education equivalent to a legal education earned at an ABA law school JD degree for bar exam purposes. These bar examinations were very similar in the subjects tested in terms of the essay portion and exactly the same issues in terms of the MBE and MPRE examinations. The applications to these other state supreme

courts were in fact petitions to take their bar exams. State supreme courts evaluated the petitions. Petitioner was judicially determined to have an ABA JD degree equivalency. Respondent per the requirements of the full faith and credit clause must recognize these determinations as a matter of law.

DC Court of Appeals Claims Commerce Clause Does Not Prohibit the Court's Protection of Lawyers and ABA Law Schools from Competition

Respondent's failure to recognize petitioner's legal education from highly accredited non-ABA law schools as well as forcing petitioner to be a graduate of an ABA law school JD program or repeat 26 semester hours of study in an ABA law school is unconstitutional as an undue burden on interstate commerce. Highly accredited non-ABA law schools provide an excellent education at substantially lower prices. If congress has not enacted laws regarding the subject the state may regulate local aspects of interstate commerce if the regulation does not discriminate against out of state competition and it is not unduly burdensome. Congress has not yet established a national bar association. Here law practice is a multi-billion dollar industry in Washington, DC that impacts the entire nation. The respondent is favoring ABA law school graduates over non-ABA law school graduates. There are zero non-ABA law schools in Washington, DC. There are many non-ABA law schools in USA and around the world. Respondent's application of Rule 46 to petitioner is unduly burdensome in that additional law school study in light of petitioner's advanced legal education and bar pass forces petitioner to spend limited resources and time that he does not possess to repeat education. Respondent is denying petitioner the use and enjoyment of his legal education and has essentially nullified the vast sums already spent on legal education. These are hardships. These hardships are faced by anybody brave enough to acquire both a national and international legal education.

The Supreme Court applies the balancing test in the interstate commerce clause analysis. Here the benefits and burdens of Rule 46 and respondent's application of rule to petitioner must be balanced. However, the respondent's goal of maintaining a competent local

bar can be achieved by less restrictive alternatives discussed in original petition. Graduation from an ABA law school JD program or repeating courses is not the only avenue available to achieve a competent bar in DC. See Hughes v. Alexandria Scrap Corp.

There is substantial conflict between the states on this issue of petitioner's educational competency to take bar exam and practice law. For example, California, Michigan, New York, North Carolina, New Hampshire and others have determined that petitioner is educationally qualified to take bar exam. Petitioner has an equivalent ABA JD degree. States such as Kentucky, Tennessee, Virginia, Maine and others have procedures where a proper due process analysis of petitioner's legal education occurs. Many other states simply say that an ABA law school is the only road to law practice. Some states like Hawaii only accept ABA law school graduates, but readily accept petitions from non-ABA law school graduates. In the later case such a petition has never been granted. In this present case the petitioner is faced with burdensome obstacles. States and respondent are busy protecting their local contingent of lawyers in the name of public safety and administrative convenience. Petitioner is treated differently in different states. Petitioner can pass bar exam in every state and territory in USA, but is discriminated against and unduly burdened by some states and accepted with open arms in other states. However, in all states the petitioner is entitled to proper due process and the application of bar admission rules that deal with core educational achievements. Respondent's formulation and application of Rule 46 violates the commerce clause.

The Supreme Court held in such cases as Supreme Court of Virginia v. Friedman and New Hampshire Supreme Court v. Piper and the many other Supreme Court cases cited herein that the legal profession's efforts to build barriers to competition, to restrict competition in publicized quality between lawyers and to restrict competition in the delivery of low cost legal services is unconstitutional.

The Supreme Court in Supreme Court of New Hampshire v. Piper held the commerce clause found in the 4th article of the

constitution and the P & I clause were intended to create a national economic union. Most importantly, this Supreme Court held although a lawyer is an "officer of the court" he does not hold a position that can be entrusted only to a full-fledged member of the political community and thus not an officer of the state in any political sense. The Supreme Court in Piper clearly requires us to recognize that a lawyer is essentially a private party advising and representing clients in the details of a legal system. It just so happens that lawyers are licensed by the court. Court licensing does not make them state employees nor political officers but simply trusted private non-governmental officers of the court. This is something less than state action. These are private enterprises licensed and supervised by the court. The DC Department of Consumer and Regulatory Affairs requires many businesses and occupations to have a license. No one would argue that the mere fact that DC issued a license exempts that activity from the requirements of the interstate commerce clause or the Sherman Act.

The Supreme Court decided in Shapero v. Kentucky State Bar and in Peel v. Attorney Registration and Disciplinary Commission of Illinois that restrictions on lawyer advertising were unconstitutional due to the commerce and freedom of speech clauses. These cases along with the other authority in this petition clearly shows that the true nature of legal services is an occupation, a job where some citizens of the community help other members of the community navigate the details of our legal system. In other words a learned profession.

The Supreme Court in Dean Milk Co. v. Madison held that when a law is found to have a discriminatory impact, "the burden falls on the state to justify it both in terms of the local benefits flowing from the statute and the unavailability of non-discriminatory alternatives adequate to preserve the local interest at stake." Petitioner offered several alternatives that will ensure the local interest in maintaining a competent bar association without the discrimination against perfectly capable bar applicants with a combined foreign law school and ABA law school education. See Pike v. Bruce Church, Inc., where the Supreme Court held, if a legitimate local purpose is found then the question becomes one of degree. The local interest can be

protected but only with the least possible impact on interstate activities. A strict ABA law school requirement is not the least means available to ensure bar applicants have a law proficiency.

The Supreme Court held in Supreme Court of New Hampshire v. Piper that bar admission is a national fundamental right protected under the P & I clause, but more importantly the Supreme Court recognized that lawyers play an important part in commercial intercourse and the national economy which the P & I clause along with the commerce clauses were designed to protect. The Supreme Court struck down residency requirements in the Virginia bar admission rules in Supreme Court of Virginia v. Friedman and in the Virgin Islands bar admission rules in Barnard v. Thorstenn. A key holding in these cases is the Supreme Court's finding that less restrictive means were available to meet the demands of legal practice in these jurisdictions. The Supreme Court is using a substantial justification balancing with the least restrictive means test in determining the constitutionality of bar admission rules and their application.

These bar admission rules must also pass the heightened scrutiny test which will render these rules invalid. They favor and give a preference to ABA law school graduates with JD degrees and unconstitutionally discriminates against the petitioner who possess a legal education at least equal to a JD law degree from an ABA law school. Respondent employees a facially discriminatory means in that bar applicants must attend one of roughly 191 or so ABA law schools while discriminating against bar applicants with a University of Cambridge LL.M. degree, the University of London LL.B. degree and the University of Miami LL.M. degree. See New England Power Company v. New Hampshire. This test requires respondent to show the absence of any less burdensome alternative means to ensure bar applicants have a proficiency in the law.

The Supreme Court held that when a law is found to be facially neutral as the Respondent held in Teare v. Committee on admissions, but the law has a discriminatory impact then the burden of proof falls on the Respondent to justify the rule both in terms of local benefits flowing from the bar admission rules and the

unavailability of non-discriminatory alternatives adequate to preserve the local interest at stake. See Dean Milk Co. v. Madison. Here respondent can engage an independent third party to conduct a qualitative equivalency analysis of the petitioner's legal education. Respondent can conduct such an analysis on the petitioners educational merits within the context of it's administrative duties. Respondent can accept California, Michigan, North Carolina, New Hampshire and New York's Supreme Courts' determinations that the petitioner has at least an equivalent JD degree from an ABA law school. Respondent should look at other states and their procedures for conducting a legal education qualitative equivalency analysis for guidance or persuasive authority. Respondent can accept determinations from ABA law schools that petitioner has an ABA JD degree equivalent.

Respondent imposed undue burdens on petitioner. Respondent's rules and application do not pass an ad hoc balancing analysis. These rules prevent the free movement of interstate commerce in that they prevent the petitioner's legal education earned in one state and place from being moved to DC for profitable use and enjoyment or even charitable use. In an interstate commerce analysis, products in an industrial economy must be freely movable from state to state whereas in a service economy the petitioner must be allowed to move his education, training and services from state to state for profitable gain without undue burdens imposed by the state. Furthermore, Washington, DC is overwhelmingly a services economy with practically no industrialization. Respondent must recognize the inherent right expressed in the interstate commerce clause to allow legal education and legal services competition. In applying this ad hoc balancing test this court must probe the nature and functions of the bar admission rules, the character of the business involved, the actual effect of the law on the flow of interstate commerce. This is not a bright line analysis. This is a balance of the benefits and harms of the rule. The substance of the rules purposes must be considered. The Supreme Court has held that even in areas of local prerogative the burden on the free movement of interstate commerce may override the state concern. Laws dealing with public safety and prevention of consumer fraud amongst others

have not always passed constitutional muster. See Kassel v. Consolidated Freightways Corp.

DC Court of Appeals Claims Sherman Act Allows Courts to Protect Lawyers and Law Schools from Competition with Monopolies

15 U.S.C.A sections 1 – 7, The Sherman Act section 2 provides:

> Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding one million dollars if a corporation, or, if any other person, one hundred thousand dollars, or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court.

The petitioner points out that in MSL v. ABA the Third Circuit Court of Appeals incorrectly held that bar admission rules are beyond the reach of the Sherman Act. That the process and rules regulating bar admissions is a "state action" exempted from the competition enhancing objectives of the Sherman Act. They equated bar admissions rules with political actions of the state and hence refused to accept plaintiff's arguments in MSL. This was contrary to Supreme Court precedent. See supra.

The Respondent held in Teare that the Sherman Act did not apply to the bar admission rules. In Goldfarb v. Virginia State Bar Association the Supreme Court held that the learned professions including the law profession was subject to the Sherman Act. They held that the court's per se rule in determining a breach of the Sherman Act did not apply, but that a rule of reason analysis which requires a balancing of the restraints anti-competitive effects against the pro-competitive aspects applies. In other words, the benefits and harm of Rule 46 and it's application must be weighed. This reasoning can be seen in the Supreme Court's decisions dealing with the medical profession in American Medical Association v. United

States. The same rule of reason was used in National Society of Professional Engineers v. United States.

The reach of the Sherman Act has now been interpreted as being coextensive with congress' constitutional power under the interstate commerce clause. See United States v. South-Eastern Underwriters Association. Here congress has the constitutional power to regulate commerce in the District of Columbia. This court's legal authority to make rules governing bar admission derives from an act of congress. Here the respondent's ABA law school requirement seriously interferes with interstate commerce and this act of congress in no way grants authority to respondent to burden interstate commerce. The Sherman Act applies to these bar admission rules.

The Sherman Act was used to bust monopolies in the old manufacturing world. The Sherman Act was used in the Microsoft and VISA/ MC cases. Times have changed and the Sherman Act also restrains service provider monopolies. Respondent's sanctioned ABA law school monopoly in legal education results in large percentages of the DC population effectively barred from the courts. For example, witness respondent's 38,000 plus small claims cases where the vast majority of litigants are not represented. Lawyers with large personal expenses acquired in legal education can not help the poor. The ABA requirement results in fewer attorneys with the ability to provide low cost legal services in DC. The ABA requirement drives up the cost of legal services in DC. The ABA requirement damages both the overall consumer welfare and the consumer's practical and meaningful access to the DC judicial system. How many criminal defendants spend ten minutes with the public defender?

The petitioner is seeking a grant of this petition in both his status as a bar admissions applicant and as a consumer of legal services in DC. The petitioner argued several cases before the DC Superior Court as a business owner without the assistance of trained legal professionals. There are no attorney's with international commercial law expertise that are willing to charge a fair price for their services in DC to the petitioner's best knowledge and belief. Petitioner states under penalty of perjury that for each case he has been a party

before the DC courts that dozens of attorneys were contacted from the yellow pages, referral services, business customers and a personal friendship network. In each case the petitioner's retainer of any one of the attorneys would have resulted in petitioner spending more money then petitioner would have saved or recovered. One retained attorney was disbarred. The conclusion of these experiences is that respondent is inflicting substantial harm on the petitioner, DC consumers of legal services and interstate commerce by refusing to admit well qualified bar applicants.

This court's rigid requirement that there is just one method, the ABA method, of acquiring an acceptable legal education contravenes the spirit and letter of the Sherman Act. In our new services economy all participants must be given every opportunity to succeed without unnecessary restrictions. Under a rule of reason balancing test the harm caused by respondent in terms of wide spread unaffordable and inadequate legal representation in the community outweighs the administrative convenience in all DC lawyers being educated in just one type of law school – an ABA law school.

Conclusion

This petition for certiorari should be granted. Respondent is acting without regard to Supreme Court precedent. They refuse to apply the constitutional law. The Supreme Court is the only realistic avenue available to petitioner to get relief. The Supreme Court can resolve this nation wide bar admissions conflict and protect the rights of aspiring lawyers, rights of legal education providers and the consumer's access to justice in Washington, DC and across the nation.

Respectfully submitted,

Robert A. Quigley, Petitioner
Pro Se

Appendix

District of Columbia
Court of Appeals

No. 05-BG-480
IN RE: Robert A. Quigley,
Petitioner

Filed July 29, 2005
District of Columbia
Court of Appeals

BEFORE: Terry and Farrell, Associate Judges; and Newman, Senior Judge.

ORDER

On consideration of the petition to waive the requirements of D.C. App. R. 46, and the recommendation of the Committee on Admissions thereto, it is

ORDERED that the petition for waiver is denied.

PER CURIAM.

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